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LIABILITY OF SKI AREA OPERATORS

By David Wells*

I. Introduction

In recent years the sport of skiing has become increasingly popular. As is true of all sports, it has its concommitant legal difficulties. It is difficult to fully explore any one aspect of legal liability in a skiing context due to the dearth of reported decisions.

Although there are many problems involving legal liability in a skiing setting, the purpose of this article is to explore and discuss one limited facet of liability, namely, the liability of a ski area to its patrons, taking into consideration the law as it has been applied in businesses similarly situated.

II. Accidents Caused by Objects in a Ski Trail

One of the most common causes of ski accidents is the tree stump or rock on a main ski trail, partially covered by snow. For purposes of discussion, suppose P, an intermediate skier who has skied at a particular ski area throughout the day, is injured late in the afternoon by a collision with a rock. The rock which caused P's injury was exposed on the downhill side of a mogul, not visible to an approaching skier until he is upon it and unable to avoid it.

Let us assume further that this ski area, as is the custom in the industry, provides a salaried Ski Patrol charged with the responsibility, among other things, of searching out exposed dangers on main ski trails and warning skiers of those defects which have been discovered and cannot be corrected. The evidence also shows there were a half dozen such bare spots on the trail, which had remained in this condition all day. No devices had been erected at the point of P's injury warning of the condition. P, while he had skied the trail throughout the day, was unaware of the defect which caused his injury, not having seen it. The area operator has provided a "T-bar" ski lift to transport skiers to the top of the mountain. In this situation, will P be able to recover damages from the ski area operator?

A. Legal Relationship of the Parties

Preliminary to a discussion of the issue posed in this hypothetical situation, P's status or legal relation to the ski area operator must be determined. Is P, when he has paid consideration for the use of the ski area and its facilities, to be classified as a licensee or an invitee?

Two fundamental tests have been advanced to determine whether or not an individual is an invitee of the occupier of the premises.[1] The first such test is known as the "Economic Benefit Test" wherein an individual enters the premises of another, commonly called the occupier, with a view towards benefitting himself in some way and which also brings at least a potential pecuni-

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1 Harper and James, *Law of Torts*, 1478, § 27.12 (1956).

ary profit to the occupier.[2] The second theory is commonly referred to as the "Invitation" or "Representation" test.[3] The basis for liability under this view is not economic benefit to the occupier, but an implied representation that reasonable care has been exercised to make the premises safe for the invitee, and to encourage his entrance.

Where the invitee relationship is found, the courts have imposed upon the occupier a duty to protect the invitee from all known dangers on the premises, as well as those which, through the exercise of reasonable care, the occupier could discover.[4] There is no duty, however, to warn the invitee of obvious or apparent dangers which he may reasonably be expected to discover and guard against.[5] It is generally held that the mere existence of a dangerous condition is not sufficient to hold the occupier liable; it must also be shown that this condition existed for such a period of time that through the exercise of reasonable care it would have been discovered.[6]

Some authorities state that as a matter of law a warning is adequate to enable the invitee to avoid the harm and thereby relieve the occupier of liability.[7] This position has been attacked as unsound in both policy and principle.[8] It would seem that while warnings may not relieve the occupier of liability as a matter of law, such signs or statements are important in determining whether the invitee was aware of the dangerous condition which caused his injury.

Most people who go to ski areas do so with the intention of participating in the sport of skiing and through this derive some benefit. Hand in hand with this is the fact that ski areas are constructed to accommodate the skier, meet his demands and through this, derive a profit. In the eyes of the law this confers upon the skier the status of invitee to the ski area operator, and it has been so held in *Wright v. Mt. Mansfield Lift, Inc.*,[9] *Kaufman v. State*,[10] and *Morse v. State*,[11] all of which involved ski mishaps.

The imposition of the invitee status upon the parties places a duty upon the occupier to warn its invitee of all known dangers on the premises which the occupier could reasonably be expected to discover. Applying this principle to the hypothetical situation, it would seem that the occupier had notice of, or through the exercise of reasonable care on his part, should have known of the injury producing defect. In addition, the area operator recognized it had a duty in this regard and in response thereto employed a Ski Patrol to warn of such defects. In the situation posed, there were no warning devices erected indicating a defect existed, and on the basis of this there would appear to be a breach of duty on the part of the occupier toward his invitee.

One case presenting an obstacle to P's recovery in the hy-

2 *Ibid.*
3 Prosser, *Business Visitors and Invitees*, 26 Minn. L. Rev. 573 (1942).
4 Restatement, *Torts* § 342 (a) (1934).
5 Illinois Cent. R.R. v. Nichols, 173 Tenn. 602, 118 S.W.2d 213 (1938).
6 Prosser, *Law of Torts*, § 78 (2d ed. 1955).
7 Restatement, *Torts* § 343 (c)(ii) (1934).
8 *Supra* note 1.
9 96 F. Supp. 786 (D. Vt. 1951).
10 172 N.Y.S.2d 276, 142 N.Y.S.2d 52 (Ct. Cl. 1958).
11 29 N.Y.S.2d 34, 262 App. Div. 324 (Sup. Ct. 1941).

pothetical is *Wright v. Mt. Mansfield Lift, Inc.*[12], which presented a situation similar to the hypothetical. There, plaintiff, an intermediate skier with two or three years skiing experience skied down an intermediate trail. During her second run along one particular trail, plaintiff, while in a "'snowplow" position and attempting to stop, suddenly fell and was injured. The evidence showed the trail at this point was of good width and relatively level. No tree stump was visible above the surface of the snow and the snow cover was smooth and adequate. One of the parties skiing with the plaintiff brushed the snow aside where plaintiff had fallen and found a tree stump 4" to 5" high from the ground. The court inferred from this that the tree stump had caused plaintiff's fall, and ruled that the plaintiff assumed the risk.

There is a good possibility P in the hypotheical could distinguish the *Wright* case from his situation in that the *Wright* case involved a tree stump as the accident causing element, not visible above the snow and not discoverable through the exercise of reasonable care. In the hypothetical posed, the defect was clearly visible above the surface, although not visible to the approaching skier. This defect was also discoverable through the exercise of reasonable care, having existed for a period of sufficient duration.

B. Classification of a Skier's Proficiency

Does the imposition of the invitee status upon the skier place a duty upon the occupier of premises to classify each skier according to his degree of proficiency in the sport? In passing upon this question, the New York Court of Claims in *Vogel v. State*,[13] stated:

> It is a manifest impossibility for the operator of a ski resort to oversee and classify for his own protection the ability of every skier who may come to ski on his slope. Consequently, he must rely on each skier being a competent judge of his own abilities. Certainly, the operator cannot be responsible for the broken neck of the novice, who, over-estimating his competence, scorns the gentle slopes and tries the ski jump.[14]

This view finds support in the *Wright* case, wherein it was stated:

> Skiing is a sport; a sport that entices thousands of people; a sport that requires an ability on the part of the skier to handle himself or herself under various circumstances of grade, boundary, mid-trail obstructions, corners and varied conditions of the snow. Secondly, it requires good judgment on the part of the skier and recognition of the existing circumstances and conditions. Only the skier knows his own ability to cope with a certain piece of trail. Snow, ranging from powder to ice, can be of infinite kinds. Breakable crust may be encountered where soft snow is expected. Roots and rocks may be hidden under a thin cover. A single thin stubble of cut brush can trip a skier in the middle of a turn. Sticky

12 *Supra* note 9.
13 124 N.Y.S.2d 563, 204 Misc. 614 (Ct. Cl. 1953).
14 *Id.* at 570.

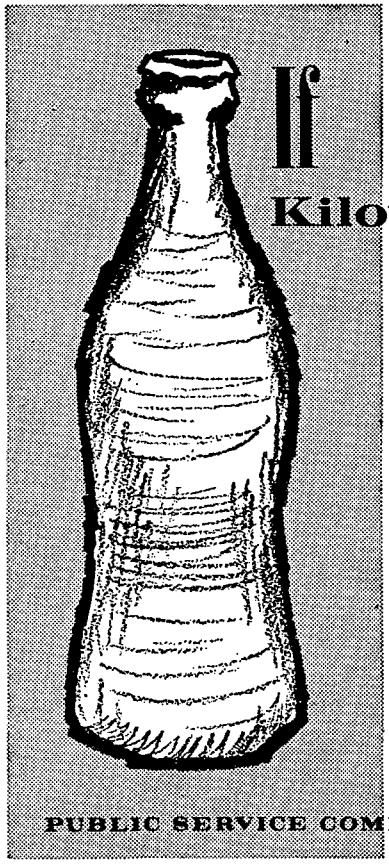
> snow may follow a fast running surface without warning. Skiing conditions may change quickly. What was, a short time before, a perfect surface with a soft cover on all bumps may fairly rapidly become filled with ruts, worn spots and other manner of skier created hazards.[15]

In light of the above discussion, there is rapidly growing authority to the effect that there is no duty on a ski area operator to classify the abilities of his skiing patrons. Consequently, P, in the hypothetical, would likely be entitled to recover for his damages, unless he is held to have assumed the risk.

C. Assumption of Risk

Assumption of risk arises generally when a plaintiff either expressly consents to relieve the defendant of his duty of conduct toward the plaintiff and thus take his chances, or impliedly assumes the risk by voluntarily entering into such a relationship with the defendant, giving an intelligent consent with full knowl-

15 Wright v. Mt. Mansfield Lift, Inc., *supra* note 9 at 790.



edge of the danger.[16] The courts differ upon whether the plaintiff must know and appreciate the particular danger,[17] or whether it is sufficient if he merely knows such dangers inhere in this activity.[18] Often one's age, experience, and general understanding will prevent his comprehension of a danger and will serve to defeat his required consent.[19]

A large number of jurisdictions hold that the assumption must be freely and voluntarily made, the doctrine being denied where the plaintiff has no reasonable alternative to his chosen course.[20] The point at which plaintiff must have a reasonable alternative varies among the jurisdictions. Some courts hold the plaintiff to have made his election when he entered the dangerous activity,[21] while still others say the choice arises when plaintiff became or should have become aware of the defect.[22] In any event, once one gains knowledge of a risk and consents thereto, the fact that he may later forget it will not bar the application of the doctrine.[23]

One of the first reported cases arising in a skiing context and passing upon assumed risk is the *Wright* case, wherein the plaintiff was injured when she collided with a tree stump covered with snow. The court, turning its decision upon the doctrine of assumption of risk, stated:

> In this skiing case, there is no evidence of any dangers existing which reasonable prudence on the part of the defendants would have foreseen and corrected. It isn't as though a tractor was parked on a ski trail around a corner or bend without warning to skiers coming down. It isn't as though on a trail that was open work was in progress of which the skier was unwarned. It isn't as though a telephone wire had fallen across the ski trail of which the defendant knew or ought to have known and the plaintiff did not know.
>
> The trail at the point of the accident was smooth and covered with snow. There were no unexpected obstructions showing. . . . To hold that the terrain of a ski trail down a mighty mountain, with fluctuations in weather and snow conditions that constantly change its appearance and slipperiness, should be kept level and smooth, free from holes or depressions, equally safe for the adult or the child, would be to demand the impossible. It cannot be that there is any duty imposed on the owner and operator of a ski slope that charges it with the knowledge of these mutations of nature and requires it to warn the public against such.[24]

The most recent decision discussing assumption of risk in a skiing setting is *Kaufman v. State*.[25] In that case, plaintiff, 16

16 Bohlen, *Voluntary Assumption of Risk*, 20 Harv. L. Rev. 14 (1906).
17 Kleppe v. Prawl, 181 Kan. 590, 313 P.2d 227 (1957).
18 Bruce v. O'Neal Flying Service, 231 N.C. 181, 56 S.E.2d 560 (1949). *See also* the Wright case, *supra* note 9 at 791, wherein the court stated: "The plaintiff, in hitting the snow covered stump as she claims to have hit, was merely accepting a danger that inheres in the sport of skiing."
19 6 L.R.A. 733 (Mass. Sup. Ct., 1890).
20 Ridgway v. Yenny, 223 Ind. 16, 57 N.E. 2d 581 (1944).
21 Bohlen, *supra* note 16 at 16.
22 Kleppe v. Prawl, *supra* note 17.
23 Southern Pac. R.R. v. Berkshire, 254 U.S. 415 (1921).
24 Wright v. Mt. Mansfield Lift, *supra* note 9 at 791.
25 *Supra* note 10.

years of age and an expert, competitive skier who had skied at this particular area three or four times in prior seasons, was injured when one of his skis caught on a rock. P had ridden a chair lift to the top of the ski area and started skiing down a path leading to a main trail. He testified that when he started down this path, he noticed the snow cover was not sufficient to remove the sharpness of the rocks. He stated he did not particularly desire to ski after having observed the general condition of this path. It was also shown he was between two hundred and three hundred feet down the path at the time of the mishap, and could have walked to the top of the mountain and returned to the base of the ski area via the chair lift.

The court, in its search for applicable authority, drew from the case of *Murphy v. Steeplechase Amusement Co., Inc.*,[26] in which the plaintiff was injured while riding on a moving belt up an inclined plane. It was common for patrons to be unable to maintain their balance on this ride because of the movement of the belt, and were often thrown backward or to one side. When plaintiff stepped on the belt, he felt a sudden jerk and was thrown to the floor, along with others. The court said such a fall was foreseen.

The judge in the *Kaufman* case quoted the famous language of Chief Justice Cardozo in the *Murphy* case:

> Volenti non fit injuria. One who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball. The antics of the clown are not the poses of the cloistered cleric. The rough and boisterous joke, the horseplay of the crowd, evokes of its own guffaws, but they are not the pleasures of tranquillity. The plaintiff was not seeking retreat for meditation. Visitors were tumbling about the belt to the merriment of onlookers when he made his choice to join them. He took the chance of a like fate, with whatever damage to his body might ensue from such a fall. The timorous may stay at home.
>
> . . . Nothing happened to the plaintiff except what common experience tells us may happen at any time as the consequences of a sudden fall. Many a skater or horseman can rehearse a tale of equal woe.[27]

In the hypothetical posed, did P have knowledge of the injury producing defect? In applying the above stated principles, it would be reasonable to assume, considering P's intermediate skiing proficiency, that at the time he entered into this relationship with the defendant area operator, he had full knowledge that such dangers as he encountered inhere in skiing. However, it is doubtful that he was then aware of this particular danger. The evidence indicated he had skied throughout the day on this trail and was unaware of the defect.

P, in the hypothetical situation, may be able to distinguish the *Kaufman* case, if his cause of action arises in a jurisdiction requiring

26 250 N.Y. 479, 166 N.E. 173 (1929).
27 *Id.*, 166 N.E. at 174.

knowledge of the particular defect, in that the plaintiff in the *Kaufman* case knew of the lack of adequate snow cover and of the likelihood of injury caused by colliding with a rock. The hypothetical situation is dissimilar in that P was unaware of the defect. There were only one half dozen such bare spots with rocks exposed on the entire trail, which would indicate a more than adequate snow cover. The *Wright* case is also distinguishable from the hypothetical posed in that the plaintiff in the *Wright* case, while she might have had knowledge that such defects inhere in skiing, was unaware of the existence of an accident causing defect.

A plaintiff may be confronted with a situation wherein knowledge of a defect is to be imputed to him, on the basis of a statement made by the court in the *Kaufman* case:

> Those who engage in the sport of skiing necessarily recognize the fact that there are risks involved. In a case such as the instant one, where they are transported up a mountain in order that they may ski down on open trails or slopes, they are enabled to see the prevailing conditions so far as the presence and the amount of snow on the terrain is concerned.[28]

A plaintiff faced with this problem should take into consideration the fact that most courts are generally unfamiliar with skiing, which the above statement serves to illustrate. The snow cover under a ski lift is ordinarily not packed and is often quite deep, thereby covering the natural terrain. The snow on a ski trail is usually packed, meaning there is a greater chance that rocks and other obstacles will be exposed. Usually the ski lift transports skiers up the mountain out of sight of most of the trails; as a consequence, the skiers are unable to judge for themselves the general snow conditions on a ski trail until they actually reach their intended trail. Moreover, wind, sun and other elements may remove a substantial amount of the snow cover in the trail area whereas these same elements may not affect the snow under the lift.

Consider now the requirement of a free and voluntary choice, with a reasonable alternative left for a plaintiff in addition to his chosen course. In the hypothetical situation, was there such a choice?

In the hypothetical, P clearly had an alternative to going skiing — he could have stayed home. This view finds support in the *Murphy* case where it was stated "The timorous may stay at home."[29] The other position in this regard hinges upon whether P must have a reasonable alternative after discovery of the danger. This position would find support in the *Kaufman* case.[30] A court rendering a decision upon this point should consider first that P, in the hypothetical posed, had skied at this particular ski area the entire day and was unaware of the defect; and second, that this danger was in such a hidden position that P was unaware of its existence until he was upon it and unable to avoid it. Any holding in this regard is, of course, dependent upon the view a particular

28 Kaufman v. State, *supra* note 10, 172 N.Y.S.2d at 282.
29 *Supra* note 26, 166 N.E. at 174.
30 *Supra* note 28.

court takes as to when an individual must have a choice relative to the mishap.

In an attempt to distinguish the *Kaufman* case from the hypothetical situation on this point of a voluntary choice, P should note the reliance the court in the *Kaufman* case placed on the *Murphy* case, wherein Chief Justice Cardozo stated "one who takes part in such a sport accepts the dangers that inhere in it so far as they are obvious and necessary. . . ."[31] In applying this statement, one must take into consideration the facts of the *Murphy* case as distinguished from those of the hypothetical situation. If the *Murphy* case is applicable, can it truly be said that a defect, such as a rock exposed above the surface of the snow, is necessary to the sport of skiing? Can it reasonably be said that this particular defect was obvious to the plaintiff?

Another distinguishing factor pertaining to the voluntary choice requirement is that in the *Kaufman* case the plaintiff was not more than three hundred feet down the path when he suffered his injury. It was also brought out that the plaintiff, after observing the general lack of snow, no longer desired to ski and could have returned to the base of the ski area via the chair lift. On the basis of this evidence, the plaintiff had a reasonable alternative to his chosen course. The hypothetical posed is dissimilar in that a "T-bar" lift was utilized, which is decidedly different in its operation from a chair lift. At a ski area where a "T-bar" tow is employed, a skier is unable to return to the bottom of the ski slope by means of the tow. The alternative to riding the lift back down the mountain has now been removed. It hardly seems reasonable to compel a skier to walk a mile's distance to the base of the area, since walking in deep snow is quite difficult. The plaintiff who is injured as a result of having to ski down under such circumstances is in a much better position to argue lack of a voluntary choice. This same argument would also be available where a skier had skied part way down a mountain and encountered a sudden lack of snow.

D. Reliance on Warnings Customarily Employed

Setting aside the discussion relative to the duty to warn an invitee as imposed on the occupier of premises, and the discussion of assumed risk, there is one additional argument a plaintiff can

31 *Supra* note 26, 166 N.E. at 174.

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advance in a situation such as that posed in the hypothetical. Many courts hold that where a defendant has no duty to warn the public of a danger, and the plaintiff, a member of the public, is injured as a result of that danger, the plaintiff cannot recover.[32] These courts have gone on to say, however, that while there may be no duty on the defendant to warn of the danger, once he volunteers to do so and the public has come to rely on this warning, an injured plaintiff may recover for his damages, if he has relied on defendant's past warnings.[33]

Applying this principle to the skiing context, the plausibility of such an argument can readily be seen. At many ski areas throughout the country the ski area operators erect warning signs or devices notifying skiers that a certain danger exists. Again setting aside the previous discussion pertaining to the duty to warn, once this practice of warning is established and the skiing public has come to rely on such warnings, the defendant area operator has opened himself up to possible liability, and has also conditioned or eliminated the defense of assumption of risk. Whether this argument will be accepted by a court will, of course, depend upon the view the court has taken in the past in this regard.

E. Avoidance of Liability by a Ski Area Operator

How can an area operator best guard against liability in view of the general discussion relative to warnings and assumed risk? It would seem that the most effective way a ski area can place the risk upon the individual skier is to remove the guesswork for the skier. The simplest and most efficient method to accomplish this is through the utilization of signs or other warning devices.

The State of New York, operator of the ski area involved in the case of *Morse v. State*,[34] advanced the argument that signs placed in the area served as an adequate warning. The court's answer to this was:

> It [the State] should have known that such signs are not sufficient. In every group such as it invited to here assemble there are those who can not resist the temptation of a sled run down the more open ski slope. Sledding is often indulged in by the young for the thrill of its speed and danger. To them signs mean little. The stronger the prohibition, the greater the temptation.[35]

This early position would seem to carry less weight today in view of the current tendency to hold the skier to have assumed the risk of dangers which he has knowledge of and consents to assume. However, if it is found to be an obstacle in a subsequent action, it is entirely possible it will be distinguished in that the signs in the *Morse* case were a warning to sledders to avoid the ski slope and not warnings to skiers of the dangers created by sledders.

Nevertheless, for purposes of promoting safety as well as avoiding liability, it is good practice to utilize warning signs or devices in a ski area. Signs should be employed to apprise each skier of

32 Pritchard v. Liggett and Meyers, 295 F.2d 292 (3rd Cir. 1962); Erie R.R. v. Stewart, 40 F.2d 855 (6th Cir. 1930).
33 *Ibid.*
34 *Supra* note 11.
35 *Id.*, 29 N.Y.S.2d at 37.

the degree of proficiency required to negotiate a particular trail, as well as separate signs or devices, i.e. warning flags or snow fences, warning of dangers existing on these trails, in so far as they are known to the occupier or discoverable through the exercise of reasonable care.

It would seem that the ideal utilization of signs would include the following: (1) a large map of the ski area posted in a conspicuous place, probably in the main building at the base of the ski area, indicating thereon the location of and the degree of skill required for each ski trail and a designation of the ski lifts serving each trail; (2) a sign at the bottom of each ski lift indicating the names and types of trails served by the particular lift; (3) a sign at the top of each ski lift indicating the location of each trail and the degree of proficiency required thereon and (4) a similar sign at the top of each trail. Each skier should be advised, when he purchases his ticket entitling him to use the facilities provided, that signs are posted throughout the ski area for his benefit.[36]

While it has been suggested that signs be employed for various purposes throughout a ski area, it should be noted that these signs must be conspicuous but not in a position that endangers skiers. The flag indicating a bare spot of course cannot be placed other than in the main part of the trail. In this situation, it would seem best to construct such a flag on a thin stick, or something that will give way, should a skier come in contact with it.

The use of such a warning system as outlined, would be an important factor in any subsequent litigation where a question of assumption of risk and negligence for breach of a duty to warn is raised.

III. AREA OF INVITATION

Most jurisdictions hold that the status of invitee is retained so long as the visitor is within those portions of the premises which an invitee's purposes may reasonably be anticipated to take him, or cause him to believe are open for his benefit.[37] However, once he enters a part of the premises which would not lead him to reasonably believe it is open to him, and is not in fact open to him, this status terminates.[38]

At many ski areas, particularly those in the Western United States, the terrain is quite rugged. Many dangerous clearings appear to be trails taking off from a main trail. In such a ski area, the skier would appear to have almost free rein to travel anywhere he chooses, reasonably believing this portion of the premises is open to him and thereby retaining his favored status. It may also be that the run for the ski jump starts from the edge of a main trail, giving the appearance of a smaller trail leading off the main trail.

These areas are usually not intended by the area owner to be used by the typical skier. To insure against a skier entering one of these forbidden areas to his injury, and to place the risk of liability upon the skier, it would seem that a warning sign or device

36 Lebkeucker v. Pennsylvania R.R., 97 N.J.L. 112, 116 Atl. 323 (1922).
37 Annot., 14 L.R.A. (N.S.) 1118 (Ill. Sup. Ct. 1908).
38 Loney v. Laramie Auto Co., 36 Wyo. 339, 255 Pac. 350 (1927).

should be posted in a conspicuous place near the entrance to the closed area, indicating that the area is closed.

IV. Collisions With Other Skiers

The National Ski Patrol System was created about 25 years ago, comprised of volunteers, to provide first aid and assistance to injured skiers.[39] However, the Patrol is becoming more a group of men and women who, upon completion of a rigorous course of training, patrol the ski slopes to assist the injured, but also take the responsibility of maintaining safety on the slopes.[40] At every ski area thoughout the United States, there is a constant problem of a ski area's liability for the acts of an individual skier who continuously skies out of control, thereby endangering the other patrons of the area.

There have been numerous cases passing upon the occupier's duty to provide attendants to protect his invitee.[41] In the typical business where people classified as invitees gather in the form of crowds, it is generally held that, save extraordinary circumstances indicating a likelihood that a customer may suffer injuries at the hands of a crowd, there is no duty to provide attendants.[42] In the amusement park setting, the courts have often held the occupier liable for injuries inflicted accidentally, negligently or intentionally upon the invitee by third persons, provided the occupier had sufficient notice and time to correct this danger, or could have done so through the exercise of reasonable care.[43]

Throughout the reported decisions in these two settings, as well as in other contexts, a plaintiff, to recover for his injuries, must prove that the defendant occupier had a duty to provide attendants and that the failure to provide attendants was the proximate cause of his injury.[44] Applying these principles to a skiing case, it would seem that there is a duty placed upon the ski area operator to control the habitually reckless skier, particularly where the area operator is aware of such conduct. Whether the failure to provide attendants, assuming there is a duty to provide attendants, was the proximate cause of a plaintiff's injury will, of course, be a question of fact for the jury.

Skiing does not present a situation wherein reckless conduct is necessary or called for; quite the contrary. A warning under these circumstances would seem to be inadequate. The only course left would be to grant the privilege to ski to the individual subject to revocation for continuous carelessness,[45] with enforcement left to the Ski Patrol. To date little has been done to correct this unnecessary hazard.

The application of these principles would place somewhat of a greater burden upon the area operator in that more Ski Patrolmen would be required. Quite possibly courts faced with this problem will draw from the authority of other areas of the law and find this additional burden necessary, in view of the resulting benefits.

39 Denver Post, Oct. 28, 1962 (Empire Magazine p. 26).
40 Wright v. Mt. Mansfield Lift, *supra* note 9.
41 Annots., 20 A.L.R.2d 8, 84 (1951); 18 A.L.R.2d 904 (1949).
42 *Ibid.*
43 Hughes v. St. Louis Nat. L. Baseball Club, 359 Mo. 993, 224 S.W.2d 989 (1949).
44 Smith v. Kroger Grocery and Baking, 339 Ill. App. 501, 90 N.E.2d 500 (1950).
45 Annot., 20 A.L.R. 8, 21 (1951).